O/Contract-/48

1948. **File No.** 25/48

Legal Department

G **BRANCH**

Subject:— Opinions on the ~~cases~~ under the Indian Contract Act. 1948

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OFFICE OF THE R&L.A.

Under condition 2 of the agreement, the miller agreed to give out turn of Turdal at the rate of 6 Bengal maunds 2½seers per 8 Bengal maunds of whole tur. This only lays down the ratio between Tur and Turdal. In condition 6 it is provided that Govt. will be entitled to delivery of 6 Bengal maunds 2½ seers of net oiled Turdal per 8 Bengal maunds of Tur delivered. The miller was allowed toretain Chuni, Chhala etc. as wages for work done. ~~Shxt~~ There is no provision in the contract regarding the rights of the respective parties in respect of the excess, and in its absence, it seems ~~kit~~ is an implied term of agreement that the benefit should go to Govt. to whom the Tur belonged. The contractor cannot therefore lagally claim anything more than Chuni and Chhala.

Tur was made a monopoly grain in Kaira District under G.H.C.S.D.No.943/II dated 14th March 1947. The contractor could not therefore sell the grain. Under the agreement the contractor was not allowed even to remove Chuni and Chhala from the factory without the previous permission of the Collector and it was obligatory on him to maintain true and correct account off tur, turdal and other byeproducts. The contractor was therefore obliged to bring the excess to the notice of Govt. The miller's claim may therefore be rejected.

Sd/P.M. Vad.

Remembrancer of Legal Affairs.

U.O.R. to C.S.D.No,2693,dated 18-3-48.

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Office of the R.L.A.

The view taken by the Commissioner, Southern Division does not appear to be without any foundation. There was no reason for the driver to take the risk when the nala was rising and as a prudent man he should have foreseen the danger of the engine failing while crossing the nala; and the fact that another truck could pass through the nala would be no justification for this driver to take the risk. The dispute may be referred to arbitration under para III (viii) of the agreement.

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

U.O.R. to C.S.D.No4114 dated 28-4-1948.

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M/s.A.H.Bhiwandiwalla & Co. who are in the occupation of Godowns Nos. 1 to 8 in the Cement Chawl at Madhavrao Nokde Street, Kiliwada, Bombay, requisitioned by the Govt. of Bombay from the Bombay Municipality, were served with a notice on 17.1.49 to quit and deliver vacant possession to Govt. by 28th Feb. 49 failing which Govt. threatened to file a suit against them. On 8.4.49 they have sent a cheque for Rs.1236 being the rent of the premises for the months of Feb. and March 1949. It appears that no ejectment suit has so far been filed. The question for consideration is whether the rent should be accepted.

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There is no objection to accept rent for Feb. 49 as the Co. was asked to vacant from the end of Feb. 49. As regards acceptance of rent for March 49, it would amount to waiver of notice if it is accepted in due course. It should, therefore, be accepted 'without prejudice' and as compensation for use and occupation of the premises (Pl. see R.L.A.'s opinion No.G.311, dt. 23.4.49).

Solicitor may see before this goes to R.L.A. for final approval.

Sd/

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